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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,937	06/04/2002	Martin John Charles Offa-Jones	THOM-0021	4754

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
3677	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,937

Applicant(s)

OFFA-JONES, MARTIN JOHN
CHARLES

Examiner

James R. Brittain

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bentsen (US 4673383) in view of Kapperman et al. (US 6004032).

Bentsen (figure 8) teaches reclosable closure structure with one single pair of ribs 55 with one rib of each pair positioned one at a respective margin of the respective base member to secure the base member to the web or film while permitting the fastening strip to be spirally wound and retained in such a configuration by retaining the spirally wound assembly against lateral displacement as would permit entanglement during payoff or unwinding of the strip from a supply roll and possible interference with the processing to which the zipper strip assembly is subjected downstream from the payoff from the supply roll (col. 6, lines 7-24; col. 5, lines 39-54). The closure is separable and defines a male/female closure. The difference is that each has flanges extending from the base members. However, Kapperman et al. (figure 11) teaches a closure fastener comprising a male/female 152, 154 closure between a pair of opposed base members secured to package walls 156, 158 respectively, wherein a single flange extends upwardly from the female member 154 and is inherently capable of being used for attachment of the closure to a web or film through the statement that the female profile 154 is secured to a package wall 158 (col. 9, lines 44-45). There are no flanges extending from either side of the

Art Unit: 3677

base of the male member 152. As it would be beneficial to provide an asymmetric flange structure so as to have a particular asymmetric flexibility to the web structure on the device of Bentsen, it would have been obvious to modify the closure structure of the device of Bentsen so as to maintain the ribs at the margins of the closure members, but to have only a single flange extend from one of the closure members as taught by Kapperman et al. (figure 1) as being a desirable configuration by providing an asymmetric base on the female member.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bentsen (US 4673383) in view of Kapperman et al. (US 6004032) as applied to claim 1 above, and further in view of Custer et al. (US 5216787).

Further modification of the closure of Bentsen such that sealant material is co-extruded on to each rib would have been obvious in view of Custer et al. (figure 3) teaching that it is desirable to do so in order to have a intermediate ribs 325 between the closure and adhesive ribs that act as a tie material to better match the material of the closure to that of the adhesive wherein it is desirable to have the materials co-extruded so that there is a stronger securement.

Response to Arguments

Applicant's arguments filed April 24, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that Kapperman is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977

Art Unit: 3677

F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, applicant argues in lines 2-4 of the first full paragraph of the response received April 24, 2006 as reproduced below:

Further, the Office

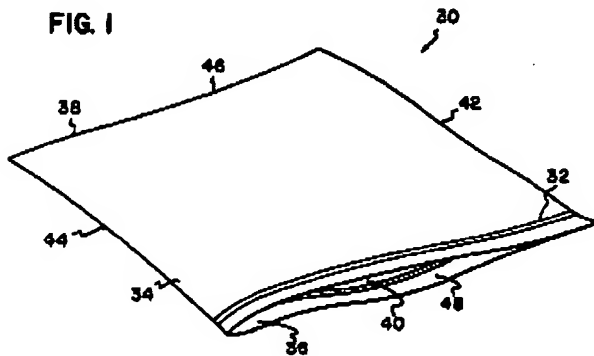
Action ignores the question of whether the skilled artisan would deem Kapperman analogous art.

The question of analogous art seems self-evident with respect to Kapperman et al., but since applicant insists, a review of Kapperman et al. (US 6004032) shows that it is used on packages (see the Field of the Invention, Background of the Invention and the Summary of the Invention). This is also consistent with the figures and figure 1 shows the ubiquitous flexible package. The Field of Invention and figure 1 from Kapperman et al. is reproduced below on the left and applicant's Field of the Invention is reproduced below on the right.

Kapperman et al.

FIELD OF THE INVENTION

The present invention generally relates to closure arrangements for polymeric packages. In particular, the present invention relates to tamper-evident closures.

FIG. 1

Applicant's device

Field of the invention

This invention relates to reclosable fasteners, otherwise known as zippers, for plastics bags and other containers, and is particularly concerned with zippers intended to be applied to a film or web using cross-web techniques.

It is submitted that the device of Kapperman et al., which mounts a male/female fastener to a flexible package, is clearly pertinent to the mounting of male/female closures to flexible packages and is therefore analogous art. Applicant's argument is unpersuasive.

Art Unit: 3677

Applicant argues that there is no motivation to modify the reclosable fastener of Bentsen by the teachings of Kapperman et al. and makes the below argument found on page 5, the first full paragraph, lines 7-13 as reproduced below:

Still

further, the Kapperman disclosure clearly precludes the attachment of the intact (interlocked) closure by a single flange. Kapperman specifically teaches this from column 9, line 56 through column 10, line 11 as was detailed in the prior responsive paper (e.g. see page 5, last paragraph). The skilled artisan seeking to modify the attachment of an intact closure would not look to Kapperman which features separate male and female members which must remain separated until after the construction of the entire package.

It is important to note that the argument is clearly couched in the language of the fastener combined and “attached” to the web. Applicant is not claiming the web or film in combination. Review of the claim construction finds the language “for attachment of the closure to a web or film” (claim 1, lines 3-4) and “being arranged to attach the fastener additionally to the web or film” (claim 1, line 7). If applicant was claiming the closure in combination with the web or film, then the argument would carry more weight, but applicant has clearly chosen a claim construction that does not claim the web or film in combination leaving only the fasteners alone as claimed with a capability of being attached. In this field, adhesives, etc. are ubiquitous in securing closure strips to the web or film and it is submitted that the reason provided in the above rejection to review the evidence provided by the teachings of the art represented by Bentsen for the reclosable fastener and Kapperman et al. is sufficient to render obvious the subcombination claim construction overtly chosen by applicant for the reasons given above and that applicant’s particular motivation for providing his structure is not the only motivation that would yield a result rendering obvious the claimed subject matter, particularly in view of applicant not

Art Unit: 3677

claiming the web and the particular attachment of the closure to the web that applicant is arguing and is central to applicant's argument.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

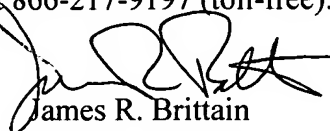
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "James R. Brittain", is written over the printed name.

James R. Brittain
Primary Examiner
Art Unit 3677

JRB